

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
MARCH 15, 1994**

The one thousand six hundred and ninety-first meeting of the Milwaukie City Council was called to order by Mayor Lomnicki at 7:00 p.m. at the Milwaukie Center with the following Councilmembers present:

Craig Lomnicki,
Mayor
Rick Farley

Jean Schreiber
Rob Kappa
Bob Knudson

Also present:

Dan Bartlett,
City Manager
Charlene Richards,
Assistant to the
City Manager
Maggie Collins,
Community Development
Director

Tim Corbett,
Public Works
Director
Greg Drechsler,
City Engineer
Dave Krogh,
Associate Planner
Pat DuVal,
Recorder/Secretary

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

None.

PUBLIC HEARING

Storm Water Utility

Mayor Lomnicki called the Public Hearing on an Ordinance establishing a storm water utility to order at 7:01 p.m.

Mayor Lomnicki said the purpose of the hearing was to consider an ordinance that would implement a storm water utility for the City. This action was a result of the Clean Water Act. This was the second of two Public Hearings held to consider an Ordinance and supporting Resolution that implement a storm water utility for the City. As a result of the Clean Water Act, the City filed for a National Pollutant Discharge Elimination System (NPDES) permit in May 1993. This application included a comprehensive storm water program and proposed a stable funding mechanism through a utility fee. The Oregon Supreme Court ruled that such fees were outside the Measure 5 limitations. The first public hearings on this matter were held February 1 and 15, 1994. He reviewed the conduct of the hearing.

Staff Report: **Tim Corbett**, Public Works Director, presented the staff report in which the City Council was requested to consider an ordinance amending the Milwaukie Municipal Code to add Chapter 13.14C, Storm Water Management; Amending Section 8.04.140, Surface Waters and Drainage; and repealing Chapter 12.36, Storm Drainage Facilities Funding.

He presented a slide show indicating the types of services which would be provided by the new utility. DEQ considers the City of Milwaukie as one of the jurisdictions that makes up a larger metropolitan area within Clackamas County. This was the reason Milwaukie was required to submit a National Pollutant Discharge Elimination System (NPDES) permit application.

Corbett said benefits to Milwaukie residents would include reduction of property damage during heavy rains and protection of natural resources. The City would be able to offer consistent maintenance, keep pace with local development, and be a voice in regional storm water management.

Corbett discussed water quality issues and the need to monitor the entire water basin in order to determine the source of pollutant release. Detergents, pesticides, herbicides, and heavy metals are among those things that will be monitored. Repair and maintenance of catchbasins is important because that water will eventually go into the rivers and streams. Increased street sweeping will help improve storm water quality. Maps of the complete system will be prepared to help determine possible pollution sources. The number of site inspections will be increased in order to determine if proper erosion control methods are in place and that they are maintained. Public education to make citizens aware of the need to keep storm water clean is an essential element of the program. National Pollutant Discharge Elimination System (NPDES) permit records keeping and master planning are other proposed services. He said it was important that Milwaukie be involved in storm water management with other upstream jurisdictions. Water quality can only be solved with regional coordination. He said the program will only become more expensive; for example, the cost of the 1985 Street/Storm Drain Utility was \$2.85.

Corbett discussed possible funding mechanisms that had been considered. There were concerns that this was a way to get around Measure 5 limitations. The storm water utility has been a City issue since 1985.

Funding options included General Fund, grants and loans, general obligation bonds, revenue bonding, systems development charges, improvement district and special assessments, plan review and inspection fees, Street Fund, ad valorem taxes, annexation to Clackamas County Service

District, and formation of a storm water utility. The City Council could also decide to do nothing. This could result in third party litigation, building moratorium, regional authority takeover, and further deterioration of Johnson Creek.

Corbett discussed how the \$4.00 per month fee would be distributed. The estimates were: capital expenditures, \$1.09; materials and services, \$0.92; salaries, \$0.79; general fund and billing, \$0.28; Public Works, \$0.20; Engineering, \$0.26; and contingency \$0.46. This is a preliminary distribution being prepared for Budget Committee review.

Corbett discussed how capital dollars would be spent based on the City's Capital Improvement Plan. These estimates were: repair and maintenance of the existing system, 17.0%; infrastructure improvements, 33.0%; drywell installation and rehabilitation, 9.0%; equipment and vehicles, 28.0%; and local flooding projects, 13.0%. He said the proposed fee would provide about \$300,000 for capital improvements after five years. Equipment and vehicle costs would probably level out after about two years. Some current staff will be used.

Corbett discussed Milwaukie's current storm water system. The system is 34.0% pipe; 31.0% natural or non-pipe; and 35.0% drywells. There are currently about 140 drywells in Milwaukie, and the City replaces three or four per year. A chart indicated the type of existing storm water drainage in the City, including some surface flow to existing storm lines. The cost of building a new infrastructure is estimated at about \$7.5 million on a revenue bond. A fee estimated at \$9.71 per Equivalent Service Unit (ESU) would be necessary to repay the bond.

Corbett discussed the issue of whether this was actually a mandate. He reviewed the correspondence in the packet material from Michael Downs, Water Quality Division Administrator, and Charles Ashbaker, Water Quality Division, verifying that the information being distributed by the City was accurate.

Ranei Nomura, Storm Water Coordinator, DEQ, reviewed the federal requirements of the National Pollutant Discharge Elimination System (NPDES) permit program. DEQ has told Clackamas County and the cities in the urban growth boundary that compliance is required. This is a water quality program that looks at pollution sources and runoff activities. **Nomura** said she works with entities by reviewing applications and issuing permits. She explained that the person from DEQ who testified at the previous hearing was from a different department and had different responsibilities.

Nomura discussed current drywell regulations. She said it was important to remember that it is more difficult to clean up groundwater than surface water if there is a problem. Drywell should not be used in areas where surface drainage is available.

Councilmember Knudson asked what the timeline would be to complete the project. **Nomura** said the county and cities within the urban growth boundary have submitted their applications within timelines. The Department will review the application and issue a permit within one year. She said she expected permits to be issued this fall. DEQ will enforce the program outlined in the jurisdiction's management plan. Permits are issued in five-year increments.

Councilmember Knudson asked what DEQ would do if the elements of the management plan were not completed. **Nomura** said jurisdictions can approach DEQ to re-prioritize or modify elements of the plan. Just because a jurisdiction cannot pay for the program does not mean it does not have to be done.

Mayor Lomnicki asked **Nomura** to discuss the five year permit increments. **Nomura** said the problem will not be cured in the first five years. The first improvements will be those that can be seen such as what is dumped in storm sewers or motor oil deposits in large parking lots. Later, solving the problems related to herbicides and pesticides will be considered. Everyone will have to ask if they have done enough to solve water quality problems as more is learned and technology is developed.

Councilmember Kappa asked what would happen if the City refuses to do anything. **Nomura** said DEQ can fine jurisdictions up to \$25,000 per day based on the class of violation. After the permit is signed, the City could contest certain elements. DEQ first seeks voluntary compliance, but if failure to comply is intentional or willful, then another course of action could be taken.

Councilmember Schreiber said DEQ issues this permit granting jurisdictions the right to develop their own systems. She asked if the system could be given to another jurisdiction such as Clackamas county if the city failed to comply. **Nomura** said she was not sure at this point, however, if DEQ would go through enforcement procedures until the City complied. The permit is required. Voluntary compliance did not work, and the Clean Water Act was modified to include municipal storm sewer systems. It is now a "must do" instead of a "please do" situation. She added that the first five years of the program may allow jurisdictions more

flexibility than future permits. The first five-year permit must be taken seriously.

Councilmember Farley discussed the EPA 1990 Federal Register. **Nomura** said Congers used information from the Urban Storm Water Runoff Study when modifying the Clean Water Act in 1987.

Councilmember Farley asked if the study was initially industrial. **Nomura** said the study was done in heavy transportation areas.

Councilmember Farley asked if starting a program like the one suggested was a step in the right direction. **Nomura** said money to implement the program is necessary.

Councilmember Farley asked how water quality could be monitored when development must be 50 feet from a waterway in one jurisdiction and 25 feet in the adjacent jurisdiction. **Nomura** said this was the value of participation in a regional group. Water quality goes beyond political and jurisdictional boundaries. Clackamas County and the cities have done a good job of working together. She added that DEQ does not want to force a regional authority, such as USA in Washington County, but it could be necessary.

Councilmember Farley asked if there were population restrictions on the cities included in the Nationwide Urban Runoff Program. **Nomura** said this was a nationwide program that looked at urbanized areas such as Eugene, Portland, and Bellevue.

Corbett discussed how the ESU rate was determined for residential and commercial by aerial and infrared photography.

Anne Marie Smith, CUAC Chair, 11117 SE 30, said the Citizens Utility Advisory Commission (CUAC) had done a full and comprehensive review of the thirteen funding options. The CUAC voted unanimously that the storm water utility was the most equitable option. She urged Council support, both as a resident and CUAC member, of this proposal to preserve the quality of life in Milwaukie.

Shaun Piggott, consultant, discussed similar storm water utility programs implemented in cities such as Tulsa, Tucson, and Las Vegas. He said City staff made a consistent commitment to take the subject to the community.

Nomura said this was a good program, but it meets only the minimum standards.

Councilmember Farley asked what the anticipated increases were for sanitary sewer and water. **Corbett** said the cost of service studies were currently underway. Increased sewer and water rates would probably be proposed.

Councilmember Farley asked if the \$4.00 per month would include anything new. **Corbett** said about \$300,000 of the fees collected would be allocated over five years.

Mayor Lomnicki recessed the meeting at 8:28 p.m. It was reconvened at 8:37 p.m.

Correspondence: Letter from Joe Bernard, Challenge Center, requesting waiver for non-profit. Letter from Alan Fletcher, Citizens Utility Advisory Committee member, supporting the storm water utility. Memorandum from Shaun Piggot on estimated impact of General Obligation bond.

Testimony in Support: **Steve Berliner**, 4455 SE Aldercrest Road, Milwaukie, spoke in support of the storm water utility on behalf of the Friends of Mt. Scott and Kellogg Creek Watershed. He said many members of the groups are already paying the fee as residents in other jurisdictions. He said management should be basinwide and uniform throughout the area to effectively deal with surface water problems. Significant advances have already been noted in Clackamas County through increased enforcement of development compliance in areas that have erosion, wildlife, and water quality problems. The cost should be shared equally by commercial and residential.

Testimony in Opposition: **Milt Palm**, 4182 SE Lake Rd., said he opposed the storm water utility because it created a plan that diverted the water from going back into the layers of soil. Structures cannot be supported without it. He said research needed to be done before the money is spent.

Neutral Testimony: None.

Staff Comments: **Corbett** said natural drainage ways and detention ponds would be considered.

Questions of Clarification: **Councilmember Kappa** asked if a combination of other natural factors, such as ponds, grasses and other elements of natural systems would be included, and not just a system of catchbasins. **Corbett** said some of the most up-to-date information finds that natural elements have been effective.

Close Hearing: **Mayor Lomnicki** closed the public testimony portion of the Public Hearing at 8:55 p.m.

Discussion among Councilmembers: Councilmember Kappa said the additional information presented at this hearing clarified points on funding and federal mandates. He thanked the CUAC for reviewing the funding options again.

Councilmember Knudson said he would vote for the storm water utility, but he said some residents would be concerned that the benefits would not be visible right away.

Councilmember Farley said he was concerned with this fee and the anticipated increases in sewer and water services in the coming year. He expressed concern that people would be paying for something, and they will not see any benefit.

Councilmember Schreiber commented that there has been no groundswell of opposition.

Mayor Lomnicki said this was something he believed should be done for the quality of life in our City. It is the law and is something that an environmentally conscious community should do.

It was moved by Councilmember Kappa and seconded by Councilmember Schreiber to read the ordinance amending the Milwaukie Municipal Code to add Chapter 13.14, Storm Water Management; Amending Section 8.04.140, Surface Waters and Drainage; and repealing Chapter 12.36, Storm Drainage Facilities Funding for the first time by title only. Motion passed 4 - 0 - 1 with the following vote: Mayor Lomnicki, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; Councilmember Farley abstained.

After Council discussion, Councilmember Farley voted aye. The motion carried unanimously. The ordinance was read for the first time by title only.

It was moved by Councilmember Kappa and seconded by Councilmember Schreiber to read the ordinance for the second time by title only. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions. The ordinance was read for the second time by title only.

It was moved by Councilmember Kappa and seconded by Councilmember Schreiber to adopt the ordinance. Motion passed 4 - 1 with the following vote: Mayor Lomnicki, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; Councilmember Farley nay; no abstentions.

ORDINANCE NO. 1755:

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON,
RELATING TO STORM WATER MANAGEMENT; AMENDING
THE MILWAUKIE MUNICIPAL CODE TO ADD CHAPTER 13.14,
STORM WATER MANAGEMENT; AMENDING SECTION 8.04.140
OF THE MILWAUKIE MUNICIPAL CODE; AND REPEALING
CHAPTER 12.36, STORM DRAINAGE FACILITIES FUNDING.**

**Consider Legislative Amendments to Revise Zoning Ordinance
Variance Section (ZA-94-01)**

Mayor Lomnicki called the Public Hearing to consider amendments updating the City of Milwaukie Zoning Ordinance to order at 9:07 p.m.

Mayor Lomnicki said the purpose of the hearing was to consider amendments to the City of Milwaukie Zoning Ordinance in order to provide clear and objective standards to the variance process. The Planning Commission requested that more clear and objective variance criteria be developed for Section 702 of the Zoning Ordinance. He reviewed the order of business.

Mayor Lomnicki said the procedures governing this legislative action are outlined in the staff report. The review criteria to be addressed are in Sections 904.1 and 905.1 of the Zoning Ordinance. Any interested person who wants written notice of the decision on this matter should leave their name and address with the Recorder. Any interested party may appeal the decision of the Council to the State Land Use Board of Appeals according to the rules adopted by the Board.

Staff Report: **Dave Krogh**, Associate Planner, presented the staff report in which the City Council was requested to consider ZA-94-01, a legislative proposal to modify the Variance Section within the Milwaukie Zoning Ordinance. The project was initiated by the Planning Commission as a result of interpretation problems. City staff and the City attorney prepared draft criteria. The final Planning Commission public hearing was held on February 22, 1994.

Krogh discussed the changes which included: clarification that all criteria must be satisfied; clarification of the term property characteristics; evidence that the applicant evaluated other alternatives; and identification by the applicant of potential adverse effects and possible mitigation.

Correspondence: None.

Councilmember Farley asked how this action would impact current variances. Krogh said the City considers the situation in effect at the time the lots were developed.

Testimony in Opposition: Milt Palm said he was concerned that structures were being built too close to property lines and tree roots were being severed.

Staff Comments: Krogh said the amendments being considered at this hearing dealt with the Zoning Ordinance. There were other variances related to subdivisions, signs, and probably building codes.

Questions of Clarification: Councilmember Kappa commented that the height and density variances were not included. Krogh said the Planning Commission and staff agreed that when there was a particular standard, the normal variance could deal with it.

Close Hearing: Mayor Lomnicki closed the public testimony portion of the hearing on the proposed amendments to the Zoning Ordinance at 9:17 p.m.

Determination of Findings and Decision: It was moved by Councilmember Schreiber and seconded by Councilmember Kappa to read the ordinance amending Ordinance No. 1712, the Zoning Ordinance (ZA-94-01) for the first time by title only. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, Councilmember Knudson, aye; no nays; no abstentions. The ordinance was read for the first time by title only.

It was moved by Councilmember Schreiber and seconded by Councilmember Kappa to read the ordinance amending Ordinance No. 1712, the Zoning Ordinance (ZA-94-01) for the second time by title only. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions. The ordinance was read for the second time by title only.

It was moved by Councilmember Schreiber and seconded by Councilmember Kappa to adopt the Ordinance amending Ordinance No. 1712, the Zoning Ordinance (ZA-94-01). Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

ORDINANCE NO. 1756:

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON,
AMENDING ORDINANCE NO. 1712, THE ZONING ORDINANCE
(ZA-94-01).**

**Consider Legislative Amendments Regarding Residential Homes
(ZA-94-02)**

Mayor Lomnicki called the public hearing to consider amendments updating the City of Milwaukie Zoning Ordinance to order at 9:20 p.m.

Mayor Lomnicki said the purpose of the hearing was to consider amendments to the Zoning Ordinance to bring City residential homes and related provisions into consistency with provisions of ORS 197.665 - .670 and the Federal Fair Housing Act. He reviewed the order of business.

Mayor Lomnicki said the procedures governing the legislative action were outlined in the staff report. The review criteria addressed were in Sections 904.1 and 905.1 of the Zoning Ordinance. Any interested person who wants written notice of the decision on this matter should leave their name and address with the Recorder. Any interested party may appeal the decision of the Council to the State Land Use Board of Appeals according to the rules by the Board.

Staff Report: **Dave Krogh**, Associate Planner, presented the staff report in which the City Council was requested to consider an ordinance that would amend the Zoning Ordinance to bring City residential homes and related provisions in to consistency with state statutes and the Federal Fair Housing Act. The City received a request for a building permit to expand a residential home located 6662 Furnberg from a five person to a six person occupancy facility. The home is owned by Clackamas County and managed by Northwest Mental Health Services. The Zoning Ordinance was last adopted in 1989, and state and federal laws have changed since that time. With assistance from the City Attorney's Office, staff determined that the Zoning Ordinance did not comply with the Federal Fair Housing Act requiring that residential facilities for the elderly, disabled or handicapped must be treated in the same light as single family residences.

Krogh discussed the Planning Commission work sessions and hearing on February 22, 1994. Proposed changes to the Zoning Ordinance included a revised definition for "family", a new definition for "housekeeping unit", a revised definition for "residential home", eliminating definition for "residential care facility", new definition for "congregate housing facility", new definition for "temporary

or transitional facility", and proposed changes in parking space requirements. The Planning Commission recommended that the Council adopt these changes to the Zoning Ordinance.

Councilmember Farley asked if this type of care facility was between a nursing home and a foster care home. He discussed the need for a sprinkler system. **Krogh** said this action was in response to the Federal Fair Housing Act. Care facilities must also meet licensing and occupancy standards as outlined in Oregon Revised Statutes 443.

City Attorney Monahan said facility operators must deal with issues such as sprinklers based the Uniform Building Code and the number of occupants.

Councilmember Kappa asked if the City would be informed of future changes in order to avoid similar incidents. **Krogh** said there is now a process in effect to deal with legislative changes.

Councilmember Farley asked about medical staff requirements. **Monahan** said the City does not have to monitor licensing standards such as this. **Krogh** said there was an Oregon Revised Statutes requirement for caregivers; however, it does not impact the City's Zoning Ordinance.

Correspondence: None.

Audience Testimony: None.

Staff Comments: None.

Close Hearing: **Mayor Lomnicki** closed the public testimony portion of the Public Hearing at 9:40 p.m.

Discussion among Councilmembers: **Councilmember Schreiber** said she had been involved in writing licensing requirements for group living facilities.

Determination of Findings and Decision: It was moved by **Councilmember Schreiber** and seconded by **Councilmember Farley** to read the Ordinance amending Ordinance Number 1712, the Zoning Ordinance (ZA-94-02) for the first time by title only. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions. The Ordinance was read for the first time by title only.

It was moved by Councilmember Schreiber and seconded by Councilmember Kappa to read the Ordinance amending Ordinance Number 1712, the Zoning Ordinance (ZA-94-02) for the second time by title only. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions. The Ordinance was read for the second time.

It was moved by Councilmember Schreiber and seconded by Councilmember Kappa to adopt the Ordinance amending Ordinance Number 1712, the Zoning Ordinance (ZA-94-02). Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

ORDINANCE NO. 1757:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON,
AMENDING ORDINANCE NUMBER 1712, THE ZONING
ORDINANCE (ZA-94-02).

AUDIENCE PARTICIPATION

None.

OTHER BUSINESS

Consider Property Acquisition - Community Trails Network

Dan Bartlett, City Manager, presented the staff report in which the City Council was requested to consider a resolution declaring the need to acquire property for access to community trails network. He said this was a regionally significant portion of the trail network for access to the Milwaukie riverfront.

It was moved by Councilmember Kappa and seconded by Councilmember Knudson to adopt the resolution declaring the need to acquire property for the purpose of access to community trails network and riverfront area. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

RESOLUTION NO. 4-1994:

A RESOLUTION OF THE CITY COUNCIL OF MILWAUKIE,
OREGON, DECLARING THE NEED TO ACQUIRE PROPERTY
FOR THE PURPOSE OF ACCESS TO COMMUNITY TRAILS
NETWORK AND RIVERFRONT AREA.

CONSENT AGENDA

It was moved by Councilmember Kappa and seconded by Councilmember Farley to adopt the Consent Agenda which consisted of the City Council Minutes of March 1, 1994 and liquor license renewal for Agbora Naanee, dba 7-Eleven Store. Motion passed 5 - 0 with the following vote: Mayor Lomnicki, Councilmember Farley, Councilmember Schreiber, Councilmember Kappa, and Councilmember Knudson aye; no nays; no abstentions.

INFORMATION

Councilmember Kappa discussed storm water issues in the region.

Bartlett announced that Aquatic Park Summer Schedules would be available soon.

ADJOURNMENT

Mayor Lomnicki adjourned the meeting at 9:50 p.m.

Pat DuVal
Pat DuVal, Recorder/Secretary

